

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on February 25, 2003 at 7:02 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pamela Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed. The time stamp for these minutes appears at the end of the content it refers to.

Committee Business Summary:

Hearing & Date Posted: HB 730, HB 733, 2/18/2003

Executive Action: HB 295-Do Pass As Amended, HB 667-Do Pass As Amended, HB 141-Do Pass As Amended, HB 553-Do Pass As Amended, HB 733-Do Pass As Amended, HB 730-Tabled, HB 695-Do Pass As Amended, HB 697-Do Pass

EXECUTIVE ACTION ON HB 295

Motion: REP. PARKER moved that HB 295 DO PASS.

Motion: REP. PARKER moved that HB 295 BE AMENDED, regarding the 0.3 BAC.

Discussion:

REPS. NOENNIG and PARKER discussed the amendments.

Vote: Motion that HB 295 BE AMENDED carried unanimously.
(voice vote)

Motion: REP. PARKER moved that HB 295 DO PASS AS AMENDED.

Motion: REP. PARKER moved that HB 295 BE AMENDED regarding the automatic felony charge.

Discussion:

REPS. SALES, PARKER, NOENNIG, CLARK and GALLUS discussed the bill as amended. The questions and comments that were discussed were the financial impact, the practical application, if convicted of DUI when on parole and whether this should be an aggravated offense.

Vote: Motion that HB 295 BE AMENDED failed 0-18. (voice vote)

Vote: Motion that HB 295 DO PASS AS AMENDED carried 17-1 with REP. FACEY voting no. (voice vote)

EXHIBIT(juh42a01)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 245}

EXECUTIVE ACTION ON HB 667

Motion: REP. HARRIS moved that HB 667 DO PASS.

Discussion:

REPS. HARRIS, NOENNIG, PARKER, RASER, NEWMAN and STOKER discussed what a "Ponzi" scheme is and how it differs from a "Pyramid" scheme.

Motion/Vote: REP. HARRIS moved that HB 667 BE AMENDED. Motion carried unanimously. (voice vote)

Motion/Vote: REP. HARRIS moved that HB 667 DO PASS AS AMENDED. Motion carried unanimously. (voice vote)

{Tape: 1; Side: A; Approx. Time Counter: 245 - 450}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 75}

EXECUTIVE ACTION ON HB 141

Motion: REP. NOENNIG moved HB 141 BE REMOVED FROM THE TABLE.

Vote: Motion that HB 141 BE REMOVED FROM THE TABLE carried 16-2 with REPS. GUTSCHE and RICE voting no. (voice vote)

Motion: REP. NOENNIG moved that HB 141 DO PASS.

Motion: REP. NOENNIG moved that HB 141 BE AMENDED.

Discussion:

REP. NOENNIG explained the amendment to delete language on Page 1, Line 20. REPS. LASZLOFFY and NEWMAN discussed this amendment.

Vote: Motion that HB 141 BE AMENDED carried unanimously. (voice vote)

Motion/Vote: REP. NOENNIG moved that HB 141 DO PASS AS AMENDED. Motion carried unanimously. (voice vote)

{Tape: 1; Side: B; Approx. Time Counter: 75 - 160}

EXECUTIVE ACTION ON HB 697

Motion: REP. SALES moved that HB 697 DO PASS.

Discussion:

REPS. NEWMAN, GALLUS, RICE, SALES, FACEY, LASZLOFFY, NEWMAN PARKER, LANGE, SHOCKLEY and GUTSCHE discussed the merits of this bill and what it addressed. Among the comments and questions asked were racism, hate crimes, personal stories, Native Americans against Native Americans and finally how this bill will affect the equal treatment of everyone.

Motion/Vote: REP. GALLUS moved that HB 697 BE TABLED. Motion failed 8-10 with REPS. CLARK, FACEY, GALLUS, GUTSCHE, HARRIS, NEWMAN, PARKER, and RASER voting aye. (roll call vote)

Vote: Motion that HB 697 DO PASS carried 10-8 with REPS. CLARK, FACEY, GALLUS, GUTSCHE, HARRIS, NEWMAN, PARKER, and RASER voting no. (roll call vote)

{Tape: 1; Side: B; Approx. Time Counter: 160 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 213}

EXECUTIVE ACTION ON HB 657

Motion: REP. GUTSCHE moved that HB 658 DO PASS.

Motion: REP. SHOCKLEY moved that HB 658 BE AMENDED.

Discussion:

REP. SHOCKLEY discussed his amendment for Page 2, Line 1 dated 2/20/03.

Vote: Motion that HB 658 BE AMENDED carried unanimously. (voice vote)

Vote: Motion that HB 658 BE INDEFINITELY POSTPONED carried unanimously.

{Tape: 2; Side: A; Approx. Time Counter: 213 - 270}

HEARING ON HB 730

Sponsor: REP. JEFF PATTISON, HD 95, Glasgow, Montana

Opening Statement by Sponsor:

REP. PATTISON opened the hearing on HB 730 by stating that this is a bill that says; "One + One = Two." He explained his concept to the Committee.

{Tape: 2; Side: A; Approx. Time Counter: 270 - 322}

Proponents' Testimony:

Greg Trude, Montana Right to Life, spoke in favor of this bill by stating that this bill would allow that if someone killed the mother and the unborn fetus by say, a drunk driving accident, domestic abuse, etc., the charge would be mitigated deliberate homicide.

{Tape: 2; Side: A; Approx. Time Counter: 322 - 365}

Lani Candelora, Montana Catholic Conference, spoke in favor of this bill. Ms. Candelora related a story to the Committee regarding a mother/baby.

{Tape: 2; Side: A; Approx. Time Counter: 365 - 410}

Julie Lilam, Montana Family Coalition, rose in support and related a story to the Committee.

{Tape: 2; Side: A; Approx. Time Counter: 410 - 443}

Gilda Clancy, Montana Eagle Forum, spoke in favor of this bill.

{Tape: 2; Side: A; Approx. Time Counter: 443 - 448}

Chris Jones, Coalition for Community Responsibility, rose in favor of this bill.

{Tape: 2; Side: A; Approx. Time Counter: 448 - 451}

Harris Himes, Reverend, spoke in favor of this bill.

{Tape: 2; Side: A; Approx. Time Counter: 451 - 462}

Jenny Dodge, Citizens Network, spoke in favor of this bill.

{Tape: 2; Side: A; Approx. Time Counter: 462 - 500}

Opponents' Testimony:

Beth Brenneman, ACLU, explained the legal statute related to this bill. She continued to explain to the Committee the sentence enhancement, the limited exceptions for pregnant women and the possibility of a miscarriage could possibly be prosecuted as a homicide.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 83}

John Connor, State of Montana, Department of Justice, stated that there are problems with this bill. He explained the problems in Sections 3, 4, 5 and 6.

{Tape: 2; Side: B; Approx. Time Counter: 83 - 176}

Jacqueline Lenmark, American Insurance Association, rose in opposition to this bill. She explained in Section 7 and in Sub-Section 2 the problems that may be encountered regarding malpractice insurance. She also had exceptions to the "Standard of Care" criteria.

{Tape: 2; Side: B; Approx. Time Counter: 176 - 219}

Beth Satre, Montana Coalition for Victims of Sexual/Domestic Violence, informed the Committee that a large portion of abused women do not report their abuse and this bill may make it even harder to report. This bill could lead to the criminalization of women for non-reporting of abuse.

{Tape: 2; Side: B; Approx. Time Counter: 219 - 268}

Morgan Sheets, NARAL, rose in opposition to this bill.

EXHIBIT (juh42a02)

{Tape: 2; Side: B; Approx. Time Counter: 268 - 272}

Jeri Duran, Intermountain Planned Parenthood, rose in opposition to this bill.

{Tape: 2; Side: B; Approx. Time Counter: 272 - 275}

Linda Gryczan, Montana Women's Lobby, rose in opposition to this bill.

{Tape: 2; Side: B; Approx. Time Counter: 275 - 280}

Mary Cafero, WEEL, rose in opposition to this bill.

{Tape: 2; Side: B; Approx. Time Counter: 280 - 290}

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. PARKER, RASER, RICE, and NOENNIG asked numerous questions of the sponsor, Mr. Connor and Mr. Trude about the enhancement of penalties. They asked, "Why wait until last day to bring this bill forward and why hasn't this bill been worked on in the last two years to make it more palatable to pass?"

Several questions were asked of Mr. Connor (DOJ) as to the lesser penalties, the federal requirements and the possibility that mis-carriages could cause charges to be filed.

REPS. GUTSCHE, CLARK, LANGE and SHOCKLEY queried REP. PATTISON about the bulk of prosecution being against women, women being the primary victims, whether the criminal remedy was more for the fetus than the women. Mr. Connor (DOJ) was asked whether there would be an increase of insurance rates for doctors. The question also arose that if a woman ingested illegal substances, would that constitute charges being filed against her.

{Tape: 2; Side: B; Approx. Time Counter: 290 - 500}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 289}

Closing by Sponsor:

REP. PATTISON closed the hearing on HB 730 by relating a personal story and saying that "The concept is simple, one + one = two."

{Tape: 3; Side: A; Approx. Time Counter: 289 - 371}

HEARING ON HB 733

Sponsor: REP. CLARICE SCHRUMPF, HD 12, Billings, Montana

Opening Statement by Sponsor:

REP. SCHRUMPF opened the hearing on HB 733 by stating that this bill increases the sentence for pedophiles from two years to 20 years.

EXHIBIT(juh42a03)

EXHIBIT(juh42a04)

EXHIBIT(juh42a05)

EXHIBIT(juh42a06)

{Tape: 3; Side: A; Approx. Time Counter: 371 - 456}

Proponents' Testimony:

Greg Trude, Citizen, rose in support of this bill.

{Tape: 3; Side: A; Approx. Time Counter: 456 - 500}

Harris Himes, Reverend, rose in support of this bill.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 14}

Julie Milam, Montana Family Coalition, rose in support of this bill.

{Tape: 3; Side: B; Approx. Time Counter: 14 - 22}

Gilda Clancy, Montana Eagle Forum, rose in support of this bill.

{Tape: 3; Side: B; Approx. Time Counter: 22 - 27}

Chris Jones, Coalition of Christian Communities, rose in support of this bill.

{Tape: 3; Side: B; Approx. Time Counter: 27 - 56}

Jenny Dodge, Citizens Network, rose in support of this bill.

{Tape: 3; Side: B; Approx. Time Counter: 56 - 60}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. NEWMAN, CLARK and FACEY asked questions regarding the Sexual Intercourse Without Consent statute, the inconsistencies between the two statutes, an example of teenagers related to this bill and if the sponsor would accept anything less than requested amount of 20 years for sentencing.

{Tape: 3; Side: B; Approx. Time Counter: 60 - 104}

Closing by Sponsor:

REP. SCHRUMPF closed the hearing on HB 733 by saying this bill would affect children who are less than 16 years old.

{Tape: 3; Side: B; Approx. Time Counter: 104 - 145}

EXECUTIVE ACTION ON HB 553

Motion/Vote: **REP. PARKER** moved HB 553 be REMOVED FROM THE TABLE.
Motion carried 18-0. (voice vote)

Motion: **REP. PARKER** moved that HB 553 BE AMENDED.

Discussion:

REPS. RICE, PARKER, NEWMAN, MALCOLM, CLARK, LANGE and GALLUS put forth questions regarding the legality of ranchers being possibly charged with cruelty to animals in their duties as ranchers. Additional questions regarding the difference of pets versus agriculture animals were asked.

Vote: Motion that HB 553 BE AMENDED carried 17-1 with **REP. RICE** voting no. (voice vote)

Motion/Vote: **REP. PARKER** moved that HB 553 DO PASS AS AMENDED.
Motion carried 17-1 with **REP. RICE** voting no. (voice vote)

{Tape: 3; Side: B; Approx. Time Counter: 145 - 437}

EXECUTIVE ACTION ON HB 733

Motion: REP. NEWMAN moved that HB 733 DO PASS.

Discussion:

REPS. NEWMAN, RICE, FACEY, GALLUS, NOENNIG, HARRIS and PARKER discussed the bill.

Motion: REP. NEWMAN moved that HB 733 BE AMENDED.

Discussion:

REP. NEWMAN discussed his amendment that would reduce the requested 20-years sentence to four-years sentence.

Vote: Motion that HB 733 BE AMENDED carried 12-6 with REPS. CLARK, GUTSCHE, HARRIS, NOENNIG, SALES, and SHOCKLEY voting no. (roll call vote)

Motion/Vote: REP. GALLUS moved that HB 733 DO PASS AS AMENDED. Motion carried 11-7 with REPS. CLARK, GALLUS, GUTSCHE, HARRIS, NOENNIG, SALES, and SHOCKLEY voting no. (roll call vote)

{Tape: 3; Side: B; Approx. Time Counter: 437 - 500}

{Tape: 4; Side: A; Approx. Time Counter: 0 - 130}

EXECUTIVE ACTION ON HB 730

Motion: REP. RICE moved that HB 730 DO PASS.

Motion: REP. RICE moved that HB 730 BE AMENDED.

Discussion:

John MacMaster, Legislative Staffer, explained the amendment.

Vote: Motion that HB 730 BE AMENDED carried 12-6 with REPS. FACEY, GALLUS, GUTSCHE, HARRIS, NEWMAN, and RASER voting no. (voice vote)

Motion: REP. LANGE moved that HB 730 BE AMENDED.

Discussion:

REP. LANGE discussed his amendment for Page 2, Line 11. Mr. MacMaster explained the amendment, REPS. GUTSCHE, NOENNIG, PARKER, and GALLUS commented.

Vote: Motion that HB 730 BE AMENDED carried 12-6 with REPS. FACEY, GALLUS, GUTSCHE, HARRIS, PARKER, and RASER voting no. (voice vote)

Motion: REP. NEWMAN moved that HB 730 BE AMENDED.

Discussion:

REP. NEWMAN discussed his amendment for Page 2, Line 22.

Vote: Motion that HB 730 BE AMENDED carried 13-5 with REPS. FACEY, GALLUS, GUTSCHE, HARRIS, and RASER voting no. (voice vote)

Motion/Vote: REP. NEWMAN moved that HB 730 BE TABLED. Motion failed 9-9 with REPS. CLARK, FACEY, GALLUS, GUTSCHE, HARRIS, MALCOLM, NEWMAN, PARKER, and RASER voting aye. (roll call vote)

Motion: REP. NOENNIG moved that HB 730 BE AMENDED.

Discussion:

REP. NOENNIG discussed his conceptual amendment and was informed he is not allowed to make conceptual amendment at this time.

Motion: REP. NEWMAN moved that HB 730 BE AMENDED.

Discussion:

REP. NEWMAN discussed his amendment for Section 3, Lines 16-23.

Vote: Motion that HB 730 BE AMENDED carried 13-5 with REPS. FACEY, GALLUS, HARRIS, NEWMAN, and PARKER voting no. (voice vote)

Motion: REP. NOENNIG moved that HB 730 BE AMENDED.

Discussion:

REP. NOENNIG discussed his amendment for Page 1, Line 20.

Vote: Motion that HB 730 BE AMENDED carried 11-7 with REPS. FACEY, GALLUS, GUTSCHE, HARRIS, NEWMAN, PARKER, and RASER voting no. (voice vote)

Motion: REP. NEWMAN moved that HB 730 BE AMENDED.

Discussion:

REP. NEWMAN discussed his amendment; which is to strike REP. NOENNIG'S just passed amendment, regarding the "mental state" language.

Vote: Motion that HB 730 BE AMENDED carried 15-3 with REPS. FACEY, NOENNIG, and RASER voting no. (voice vote)

Motion: REP. LASZLOFFY moved that HB 730 DO PASS AS AMENDED.

Discussion:

CHAIRMAN SHOCKLEY inquired if there would be changes in the vote if taken and whether there would be any more amendments before taking the vote. REP. NEWMAN stated he has more amendments. This motion was passed over.

Motion: REP. NEWMAN moved that HB 730 BE AMENDED.

Discussion:

REP. NEWMAN explained his amendment for striking Section 7.

Vote: Motion that HB 730 BE AMENDED carried 14-4 with REPS. FACEY, GUTSCHE, HARRIS, and PARKER voting no. (voice vote)

Motion/Vote: REP. GALLUS moved that HB 730 BE TABLED. Motion carried 10-8 with REPS. EVERETT, LANGE, LASZLOFFY, RICE, SALES, SHOCKLEY, STOKER, and THOMAS voting no. (roll call vote)

{Tape: 4; Side: A; Approx. Time Counter: 130 - 500}

{Tape: 4; Side: B; Approx. Time Counter: 0 - 110}

EXECUTIVE ACTION ON HB 294

Motion: REP. FACEY moved HB 730 be REMOVED FROM THE TABLE.

Vote: Motion that HB 730 be REMOVED FROM THE TABLE failed 6-12 with REPS. HARRIS, FACEY, GALLUS, RASER, GUTSCHE, and NEWMAN voting aye. (roll call vote)

{Tape: 4; Side: B; Approx. Time Counter: 110 - 186}

EXECUTIVE ACTION ON HB 695

Motion: REP. MALCOLM moved HB 695 be REMOVED FROM TABLE.

Vote: Motion that HB 695 be REMOVED FROM TABLE carried 11-6 with REPS. CLARK, HARRIS, FACEY, GALLUS, NOENNIG, and GUTSCHE voting no. (roll call vote) (REP. PARKER absent for vote)

Motion: REP. MALCOLM moved that HB 695 DO PASS.

Motion: REP. MALCOLM moved that HB 695 BE AMENDED.

Discussion:

REP. NOENNIG explained the amendment for Page 1, Line 30 through Page 2, Line 2.

Vote: Motion that HB 695 BE AMENDED carried unanimously. (voice vote)

Motion: REP. RASER moved that HB 695 BE AMENDED.

Discussion:

REP. NOENNIG explained this amendment to strike the "whereas" clauses.

Vote: Motion that HB 695 BE AMENDED carried unanimously. (voice vote)

Vote: Motion that HB 695 DO PASS AS AMENDED carried 10-8 with REPS. CLARK, FACEY, GALLUS, GUTSCHE, HARRIS, NEWMAN, NOENNIG, and PARKER voting no. (roll call vote) (CHAIRMAN SHOCKLEY CALLED FOR THE QUESTION WITH NO "DO PASS AS AMENDED")

{Tape: 4; Side: B; Approx. Time Counter: 186 - 431}

CHAIRMAN SHOCKLEY asked the Committee if the HB 730 should be moved to the Appropriation Committee in an effort to try and salvage it. Discussion ensued among Committee members with the outcome to not go to the Leadership of the House for HB 730.

{Tape: 4; Side: B; Approx. Time Counter: 431 - 500}

ADJOURNMENT

Adjournment: 11:46 A.M.

REP. JIM SHOCKLEY, Chairman

PAMELA SCHINDLER, Secretary

JS/PS

EXHIBIT (juh42aad)